

AMENDED IN ASSEMBLY JUNE 22, 2009

AMENDED IN SENATE APRIL 21, 2009

SENATE BILL

No. 306

Introduced by Senator Calderon

February 25, 2009

An act to amend Sections 2923.5, 2923.6, 2924.8, ~~and 2943 of and 2924f of~~, and to amend, repeal, and add Section 2943 of, the Civil Code, and to amend Section 17312 of the Financial Code, relating to real property transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 306, as amended, Calderon. Real property transactions.

(1) Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law, until January 1, 2013, prohibits a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default for an additional 30 days on loans made between January 1, 2003, to December 31, 2007, that secure residential real property, under certain circumstances.

This bill would, until January 1, 2013, provide that these provisions apply to mortgages and deeds of trust recorded between January 1, 2003, to December 31, 2007, secured by owner-occupied residential real property containing no more than 4 dwelling units. The bill would also, among other things, revise the declaration that is required to be filed in this connection with the notice of default.

(2) Existing law states legislative findings and declarations with regard to the duty loan servicers have to maximize net present value

under their pooling and servicing agreements, stating that their duty is owed to all parties in a loan pool, not to any particular parties, and that a servicer acts in the best interests of all parties if it agrees to or implements a loan modification or workout plan, as specified.

This bill would specify the application of these findings and declarations to certain investors.

(3) Existing law requires a trustee or authorized agent, upon posting a notice of sale, to post and mail a specified notice addressed to residents of property subject to foreclosure upon posting a notice of sale. *Existing law requires a notice of sale to be recorded in the county in which the property, or some part of it, is situated at least 14 days prior to the date of sale.*

This bill would specify how and when this notice is to be mailed. *This bill would extend the time during which the notice of sale must be recorded from 14 to 20 days.*

(4) Existing law requires a beneficiary on a deed of trust or a mortgagee on a mortgage to prepare and deliver a beneficiary statement or a pay-off demand statement within 21 days of receipt of a written demand from specified entitled parties. Existing law requires the written statement to include information reasonably necessary to calculate the payoff amount on a per diem basis for the period of time, not to exceed 30 days, during which the per diem amount is not changed by the terms of the note.

~~This bill would revise the period of time during which the information reasonably necessary to calculate the payoff amount may be prepared.~~

~~The bill would also, until January 1, 2014, require a beneficiary to prepare and deliver, within 21 days upon written demand, of the receipt of a short-pay request, as defined, to prepare and deliver a short-pay demand statement, which would be a written statement, conditioned on the existence of a short-pay agreement, that is prepared in response to a request from an entitled person or authorized agent, setting forth an amount less than the outstanding debt, together with any terms and conditions, under which the beneficiary would execute and deliver a reconveyance of the deed of trust securing the note that is the subject of the short-pay demand statement. The bill would provide that the short-pay agreement is an agreement in writing in which the beneficiary agrees to release its lien on a property in return for payment of an amount less than the secured obligation. The bill would permit a beneficiary that elects not to proceed with the transaction that is the subject of the demand short-pay request to refuse to provide a short-pay~~

demand statement, but would require that he or she provide a written statement, indicating that the beneficiary has elected not to proceed. The bill would provide that if the terms and conditions of the short-pay agreement require approval by the beneficiary of a closing statement prepared by an escrowholder, approval or disapproval shall be provided not more than 4 days after receipt by the beneficiary of the closing statement, or the closing statement shall be deemed approved, except as specified.

(5) The Escrow Law provides for licensing and regulation of escrow agents, other than certain exempt persons, by the Commissioner of Corporations. The law requires licensees to apply for membership in the Escrow Agents' Fidelity Corporation, a nonprofit mutual benefit corporation, which is established to indemnify its members against loss of trust obligations. The law limits required membership in the Escrow Agents' Fidelity Corporation who engage in certain kinds of business. Existing law defines and regulates the activities of exchange facilitators and excepts from the definition of exchange facilitator escrow companies, under specified circumstances.

This bill would provide escrow transactions that involve money or property held or deposited ~~with a person acting as an~~ *pursuant to specified actions of an exchange facilitator regarding deposit of funds* are not transactions that require a licensee to have membership in the Escrow Agents' Fidelity Corporation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.5 of the Civil Code is amended to
2 read:
3 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
4 agent may not file a notice of default pursuant to Section 2924
5 until 30 days after initial contact is made as required by paragraph
6 (2) or 30 days after satisfying the due diligence requirements as
7 described in subdivision (g).
8 (2) A mortgagee, beneficiary, or authorized agent shall contact
9 the borrower in person or by telephone in order to assess the
10 borrower's financial situation and explore options for the borrower
11 to avoid foreclosure. During the initial contact, the mortgagee,
12 beneficiary, or authorized agent shall advise the borrower that he

1 or she has the right to request a subsequent meeting and, if
2 requested, the mortgagee, beneficiary, or authorized agent shall
3 schedule the meeting to occur within 14 days. The assessment of
4 the borrower's financial situation and discussion of options may
5 occur during the first contact, or at the subsequent meeting
6 scheduled for that purpose. In either case, the borrower shall be
7 provided the toll-free telephone number made available by the
8 United States Department of Housing and Urban Development
9 (HUD) to find a HUD-certified housing counseling agency. Any
10 meeting may occur telephonically.

11 (b) A notice of default filed pursuant to Section 2924 shall
12 include a declaration that the mortgagee, beneficiary, or authorized
13 agent has contacted the borrower, has tried with due diligence to
14 contact the borrower as required by this section, or that no contact
15 was required pursuant to subdivision (h).

16 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
17 already filed the notice of default prior to the enactment of this
18 section and did not subsequently file a notice of rescission, then
19 the mortgagee, trustee, beneficiary, or authorized agent shall, as
20 part of the notice of sale filed pursuant to Section 2924f, include
21 a declaration that either:

22 (1) States that the borrower was contacted to assess the
23 borrower's financial situation and to explore options for the
24 borrower to avoid foreclosure.

25 (2) Lists the efforts made, if any, to contact the borrower in the
26 event no contact was made.

27 (d) A mortgagee's, beneficiary's, or authorized agent's loss
28 mitigation personnel may participate by telephone during any
29 contact required by this section.

30 (e) For purposes of this section, a "borrower" shall include a
31 mortgagor or trustor.

32 (f) A borrower may designate, with consent given in writing, a
33 HUD-certified housing counseling agency, attorney, or other
34 advisor to discuss with the mortgagee, beneficiary, or authorized
35 agent, on the borrower's behalf, the borrowers financial situation
36 and options for the borrower to avoid foreclosure. That contact
37 made at the direction of the borrower shall satisfy the contact
38 requirements of paragraph (2) of subdivision (a). Any loan
39 modification or workout plan offered at the meeting by the

1 mortgagee, beneficiary, or authorized agent is subject to approval
2 by the borrower.

3 (g) A notice of default may be filed pursuant to Section 2924
4 when a mortgagee, beneficiary, or authorized agent has not
5 contacted a borrower as required by paragraph (2) of subdivision
6 (a) provided that the failure to contact the borrower occurred
7 despite the due diligence of the mortgagee, beneficiary, or
8 authorized agent. For purposes of this section, “due diligence”
9 shall require and mean all of the following:

10 (1) A mortgagee, beneficiary, or authorized agent shall first
11 attempt to contact a borrower by sending a first-class letter that
12 includes the toll-free telephone number made available by HUD
13 to find a HUD-certified housing counseling agency.

14 (2) (A) After the letter has been sent, the mortgagee,
15 beneficiary, or authorized agent shall attempt to contact the
16 borrower by telephone at least three times at different hours and
17 on different days. Telephone calls shall be made to the primary
18 telephone number on file.

19 (B) A mortgagee, beneficiary, or authorized agent may attempt
20 to contact a borrower using an automated system to dial borrowers,
21 provided that, if the telephone call is answered, the call is
22 connected to a live representative of the mortgagee, beneficiary,
23 or authorized agent.

24 (C) A mortgagee, beneficiary, or authorized agent satisfies the
25 telephone contact requirements of this paragraph if it determines,
26 after attempting contact pursuant to this paragraph, that the
27 borrower’s primary telephone number and secondary telephone
28 number or numbers on file, if any, have been disconnected.

29 (3) If the borrower does not respond within two weeks after the
30 telephone call requirements of paragraph (2) have been satisfied,
31 the mortgagee, beneficiary, or authorized agent shall then send a
32 certified letter, with return receipt requested.

33 (4) The mortgagee, beneficiary, or authorized agent shall provide
34 a means for the borrower to contact it in a timely manner, including
35 a toll-free telephone number that will provide access to a live
36 representative during business hours.

37 (5) The mortgagee, beneficiary, or authorized agent has posted
38 a prominent link on the homepage of its Internet Web site, if any,
39 to the following information:

1 (A) Options that may be available to borrowers who are unable
2 to afford their mortgage payments and who wish to avoid
3 foreclosure, and instructions to borrowers advising them on steps
4 to take to explore those options.

5 (B) A list of financial documents borrowers should collect and
6 be prepared to present to the mortgagee, beneficiary, or authorized
7 agent when discussing options for avoiding foreclosure.

8 (C) A toll-free telephone number for borrowers who wish to
9 discuss options for avoiding foreclosure with their mortgagee,
10 beneficiary, or authorized agent.

11 (D) The toll-free telephone number made available by HUD to
12 find a HUD-certified housing counseling agency.

13 (h) Subdivisions (a), (c), and (g) shall not apply if any of the
14 following occurs:

15 (1) The borrower has surrendered the property as evidenced by
16 either a letter confirming the surrender or delivery of the keys to
17 the property to the mortgagee, trustee, beneficiary, or authorized
18 agent.

19 (2) The borrower has contracted with an organization, person,
20 or entity whose primary business is advising people who have
21 decided to leave their homes on how to extend the foreclosure
22 process and avoid their contractual obligations to mortgagees or
23 beneficiaries.

24 (3) A case has been filed by the borrower under Chapter 7, 11,
25 12, or 13 of Title 11 of the United States Code and the bankruptcy
26 court has not entered an order closing or dismissing the bankruptcy
27 case, or granting relief from a stay of foreclosure.

28 (i) This section shall apply only to mortgages or deeds of trust
29 recorded from January 1, 2003, to December 31, 2007, inclusive,
30 that are secured by owner-occupied residential real property
31 containing no more than four dwelling units. For purposes of this
32 subdivision, “owner-occupied” means that the residence is the
33 principal residence of the borrower as indicated to the lender in
34 loan documents.

35 (j) This section shall remain in effect only until January 1, 2013,
36 and as of that date is repealed, unless a later enacted statute, that
37 is enacted before January 1, 2013, deletes or extends that date.

38 SEC. 2. Section 2923.6 of the Civil Code is amended to read:

39 2923.6. (a) The Legislature finds and declares that any duty
40 servicers may have to maximize net present value under their

pooling and servicing agreements is owed to all parties in a loan pool, or to all investors under a pooling and servicing agreement, not to any particular party in the loan pool or investor under a pooling and servicing agreement, and that a servicer acts in the best interests of all parties to the loan pool or investors in the pooling and servicing agreement if it agrees to or implements a loan modification or workout plan for which both of the following apply:

(1) The loan is in payment default, or payment default is reasonably foreseeable.

(2) Anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.

(b) It is the intent of the Legislature that the mortgagee, beneficiary, or authorized agent offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.

(c) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 3. Section 2924.8 of the Civil Code is amended to read:

2924.8. (a) Upon posting a notice of sale pursuant to Section 2924f, a trustee or authorized agent shall also post the following notice, in the manner required for posting the notice of sale on the property to be sold, and a mortgagee, trustee, beneficiary, or authorized agent, concurrently with the mailing of the notice of sale pursuant to Section 2924b, shall send by first-class mail in an envelope addressed to the “Resident of property subject to foreclosure sale” the following notice in English and the languages described in Section 1632: “Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 60-day eviction notice. However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights you may have.”

(b) It shall be an infraction to tear down the notice described in subdivision (a) within 72 hours of posting. Violators shall be subject to a fine of one hundred dollars (\$100).

(c) A state government entity shall make available translations of the notice described in subdivision (a) which may be used by a mortgagee, trustee, beneficiary, or authorized agent to satisfy the requirements of this section.

(d) This section shall only apply to loans secured by residential real property, and if the billing address for the mortgage note is different than the property address.

(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 4. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, “property” means real property or a leasehold estate therein, and “calendar week” means Monday through Saturday, inclusive.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks, the first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may

1 be, in a newspaper of general circulation published in the county
2 in this state that (A) is contiguous to the county in which the
3 property or some part thereof is situated and (B) has, by comparison
4 with all similarly contiguous counties, the highest population based
5 upon total county population as determined by the most recent
6 federal decennial census published by the Bureau of the Census.
7 A copy of the notice of sale shall also be posted in a conspicuous
8 place on the property to be sold at least 20 days before the date of
9 sale, where possible and where not restricted for any reason. If the
10 property is a single-family residence the posting shall be on a door
11 of the residence, but, if not possible or restricted, then the notice
12 shall be posted in a conspicuous place on the property; however,
13 if access is denied because a common entrance to the property is
14 restricted by a guard gate or similar impediment, the property may
15 be posted at that guard gate or similar impediment to any
16 development community. Additionally, the notice of sale shall
17 conform to the minimum requirements of Section 6043 of the
18 Government Code and be recorded with the county recorder of the
19 county in which the property or some part thereof is situated at
20 least ~~14~~ 20 days prior to the date of sale. The notice of sale shall
21 contain the name, street address in this state, which may reflect an
22 agent of the trustee, and either a toll-free telephone number or
23 telephone number in this state of the trustee, and the name of the
24 original trustor, and also shall contain the statement required by
25 paragraph (3) of subdivision (c). In addition to any other
26 description of the property, the notice shall describe the property
27 by giving its street address, if any, or other common designation,
28 if any, and a county assessor's parcel number; but if the property
29 has no street address or other common designation, the notice shall
30 contain a legal description of the property, the name and address
31 of the beneficiary at whose request the sale is to be conducted, and
32 a statement that directions may be obtained pursuant to a written
33 request submitted to the beneficiary within 10 days from the first
34 publication of the notice. Directions shall be deemed reasonably
35 sufficient to locate the property if information as to the location
36 of the property is given by reference to the direction and
37 approximate distance from the nearest crossroads, frontage road,
38 or access road. If a legal description or a county assessor's parcel
39 number and either a street address or another common designation
40 of the property is given, the validity of the notice and the validity

1 of the sale shall not be affected by the fact that the street address,
2 other common designation, name and address of the beneficiary,
3 or the directions obtained therefrom are erroneous or that the street
4 address, other common designation, name and address of the
5 beneficiary, or directions obtained therefrom are omitted. The term
6 “newspaper of general circulation,” as used in this section, has the
7 same meaning as defined in Article 1 (commencing with Section
8 6000) of Chapter 1 of Division 7 of Title 1 of the Government
9 Code.

10 The notice of sale shall contain a statement of the total amount
11 of the unpaid balance of the obligation secured by the property to
12 be sold and reasonably estimated costs, expenses, advances at the
13 time of the initial publication of the notice of sale, and, if
14 republished pursuant to a cancellation of a cash equivalent pursuant
15 to subdivision (d) of Section 2924h, a reference of that fact;
16 provided, that the trustee shall incur no liability for any good faith
17 error in stating the proper amount, including any amount provided
18 in good faith by or on behalf of the beneficiary. An inaccurate
19 statement of this amount shall not affect the validity of any sale
20 to a bona fide purchaser for value, nor shall the failure to post the
21 notice of sale on a door as provided by this subdivision affect the
22 validity of any sale to a bona fide purchaser for value.

23 (2) If the sale of the property is to be a unified sale as provided
24 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
25 9604 of the Commercial Code, the notice of sale shall also contain
26 a description of the personal property or fixtures to be sold. In the
27 case where it is contemplated that all of the personal property or
28 fixtures are to be sold, the description in the notice of the personal
29 property or fixtures shall be sufficient if it is the same as the
30 description of the personal property or fixtures contained in the
31 agreement creating the security interest in or encumbrance on the
32 personal property or fixtures or the filed financing statement
33 relating to the personal property or fixtures. In all other cases, the
34 description in the notice shall be sufficient if it would be a
35 sufficient description of the personal property or fixtures under
36 Section 9108 of the Commercial Code. Inclusion of a reference to
37 or a description of personal property or fixtures in a notice of sale
38 hereunder shall not constitute an election by the secured party to
39 conduct a unified sale pursuant to subparagraph (B) of paragraph
40 (1) of subdivision (a) of Section 9604 of the Commercial Code,

1 shall not obligate the secured party to conduct a unified sale
2 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
3 of Section 9604 of the Commercial Code, and in no way shall
4 render defective or noncomplying either that notice or a sale
5 pursuant to that notice by reason of the fact that the sale includes
6 none or less than all of the personal property or fixtures referred
7 to or described in the notice. This paragraph shall not otherwise
8 affect the obligations or duties of a secured party under the
9 Commercial Code.

10 (c) (1) This subdivision applies only to deeds of trust or
11 mortgages which contain a power of sale and which are secured
12 by real property containing a single-family, owner-occupied
13 residence, where the obligation secured by the deed of trust or
14 mortgage is contained in a contract for goods or services subject
15 to the provisions of the Unruh Act (Chapter 1 (commencing with
16 Section 1801) of Title 2 of Part 4 of Division 3).

17 (2) Except as otherwise expressly set forth in this subdivision,
18 all other provisions of law relating to the exercise of a power of
19 sale shall govern the exercise of a power of sale contained in a
20 deed of trust or mortgage described in paragraph (1).

21 (3) If any default of the obligation secured by a deed of trust or
22 mortgage described in paragraph (1) has not been cured within 30
23 days after the recordation of the notice of default, the trustee or
24 mortgagee shall mail to the trustor or mortgagor, at his or her last
25 known address, a copy of the following statement:

26
27 YOU ARE IN DEFAULT UNDER A

28 _____,
29 (Deed of trust or mortgage)

30 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
31 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
32 YOU NEED AN EXPLANATION OF THE NATURE OF THE
33 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
34 LAWYER.
35

36 (4) All sales of real property pursuant to a power of sale
37 contained in any deed of trust or mortgage described in paragraph
38 (1) shall be held in the county where the residence is located and
39 shall be made to the person making the highest offer. The trustee
40 may receive offers during the 10-day period immediately prior to

1 the date of sale and if any offer is accepted in writing by both the
2 trustor or mortgagor and the beneficiary or mortgagee prior to the
3 time set for sale, the sale shall be postponed to a date certain and
4 prior to which the property may be conveyed by the trustor to the
5 person making the offer according to its terms. The offer is
6 revocable until accepted. The performance of the offer, following
7 acceptance, according to its terms, by a conveyance of the property
8 to the offeror, shall operate to terminate any further proceeding
9 under the notice of sale and it shall be deemed revoked.

10 (5) In addition to the trustee fee pursuant to Section 2924c, the
11 trustee or mortgagee pursuant to a deed of trust or mortgage subject
12 to this subdivision shall be entitled to charge an additional fee of
13 fifty dollars (\$50).

14 (6) This subdivision applies only to property on which notices
15 of default were filed on or after the effective date of this
16 subdivision.

17 ~~SEC. 4.~~

18 *SEC. 5.* Section 2943 of the Civil Code is amended to read:

19 2943. (a) As used in this section:

20 (1) “Beneficiary” means a mortgagee or beneficiary of a
21 mortgage or deed of trust, or his or her assignees.

22 (2) “Beneficiary statement” means a written statement showing:

23 (A) The amount of the unpaid balance of the obligation secured
24 by the mortgage or deed of trust and the interest rate, together with
25 the total amounts, if any, of all overdue installments of either
26 principal or interest, or both.

27 (B) The amounts of periodic payments, if any.

28 (C) The date on which the obligation is due in whole or in part.

29 (D) The date to which real estate taxes and special assessments
30 have been paid to the extent the information is known to the
31 beneficiary.

32 (E) The amount of hazard insurance in effect and the term and
33 premium of that insurance to the extent the information is known
34 to the beneficiary.

35 (F) The amount in an account, if any, maintained for the
36 accumulation of funds with which to pay taxes and insurance
37 premiums.

38 (G) The nature and, if known, the amount of any additional
39 charges, costs, or expenses paid or incurred by the beneficiary
40 which have become a lien on the real property involved.

1 (H) Whether the obligation secured by the mortgage or deed of
2 trust can or may be transferred to a new borrower.

3 (3) “Delivery” means depositing or causing to be deposited in
4 the United States mail an envelope with postage prepaid, containing
5 a copy of the document to be delivered, addressed to the person
6 whose name and address is set forth in the demand therefor. The
7 document may also be transmitted by facsimile machine to the
8 person whose name and address is set forth in the demand therefor.

9 (4) “Entitled person” means the trustor or mortgagor of, or his
10 or her successor in interest in, the mortgaged or trust property or
11 any part thereof, any beneficiary under a deed of trust, any person
12 having a subordinate lien or encumbrance of record thereon, the
13 escrowholder licensed as an agent pursuant to Division 6
14 (commencing with Section 17000) of the Financial Code, or the
15 party exempt by virtue of Section 17006 of the Financial Code
16 who is acting as the escrowholder.

17 (5) “Payoff demand statement” means a written statement,
18 prepared in response to a written demand made by an entitled
19 person or authorized agent, setting forth the amounts required as
20 of the date of preparation by the beneficiary, to fully satisfy all
21 obligations secured by the loan that is the subject of the payoff
22 demand statement. The written statement shall include information
23 reasonably necessary to calculate the payoff amount on a per diem
24 basis for the period of time, *not to exceed 30 days*, during which
25 the per diem amount is not changed by the terms of the note. ~~The~~
26 ~~period of time shall not be greater than 30 days from the date of~~
27 ~~preparation by the beneficiary and not less than the lesser of the~~
28 ~~following:~~

29 ~~(A) Ten days from the date of preparation by the beneficiary.~~

30 ~~(B) The number of days from the date of preparation by the~~
31 ~~beneficiary days until the terms of the note result in a change in~~
32 ~~the per diem amount.~~

33 (6) “Short-pay agreement” means an agreement in writing in
34 which the beneficiary agrees to release its lien on a property in
35 return for payment of an amount less than the secured obligation.

36 (7) “Short-pay demand statement” means a written statement,
37 *issued subsequent to and* conditioned on the existence of a
38 short-pay agreement *that is in possession of the entitled person*,
39 that is prepared in response to a written demand made by an entitled
40 person or authorized agent, setting forth an amount less than the

1 outstanding debt, together with any terms and conditions, under
2 which the beneficiary will execute and deliver a reconveyance of
3 the deed of trust securing the note that is the subject of the
4 short-pay demand statement. The period shall not be greater than
5 30 days from the date of preparation by the beneficiary and not
6 less than the lesser of the following:

7 ~~(A) Ten days from the date of preparation by the beneficiary.~~

8 ~~(B) The number of days from the date of preparation by the~~
9 ~~beneficiary days until the terms of the note result in a change in~~
10 ~~the per diem amount. beneficiary.~~

11 (8) *“Short-pay request” means a written request made by an*
12 *entitled person or authorized agent requesting the beneficiary to*
13 *provide a short-pay demand statement that includes all of the*
14 *following:*

15 (A) *A copy of an existing contract to purchase the property for*
16 *an amount certain.*

17 (B) *A copy of the short-pay agreement in the possession of the*
18 *entitled person.*

19 (C) *Information related to the release of any other liens on the*
20 *property, if any.*

21 (b) (1) A beneficiary, or his or her authorized agent, shall,
22 within 21 days of the receipt of a written demand by an entitled
23 person or his or her authorized agent, prepare and deliver to the
24 person demanding it a true, correct, and complete copy of the note
25 or other evidence of indebtedness with any modification thereto,
26 and a beneficiary statement.

27 (2) A request pursuant to this subdivision may be made by an
28 entitled person or his or her authorized agent at any time before,
29 or within two months after, the recording of a notice of default
30 under a mortgage or deed of trust, or may otherwise be made more
31 than 30 days prior to the entry of the decree of foreclosure.

32 (c) (1) A beneficiary, or his or her authorized agent, shall, on
33 the written demand of an entitled person, or his or her authorized
34 agent, prepare and deliver a payoff demand statement to the person
35 demanding it within 21 days of the receipt of the demand.
36 However, if the loan is subject to a recorded notice of default or
37 a filed complaint commencing a judicial foreclosure, the
38 beneficiary shall have no obligation to prepare and deliver this
39 statement as prescribed unless the written demand is received prior

1 to the first publication of a notice of sale or the notice of the first
2 date of sale established by a court.

3 (2) Except as provided in this subdivision, a beneficiary, or his
4 or her authorized agent, shall, ~~on the written demand of an entitled~~
5 ~~person, or his or her authorized agent~~ *upon receipt of a short-pay*
6 *request*, prepare and deliver a short-pay demand statement to the
7 person ~~demanding~~ *requesting* it within 21 days of the receipt of
8 the ~~demand short-pay request~~. A beneficiary, or his or her
9 authorized agent that elects not to proceed with the transaction
10 that is the subject of the ~~written demand short-pay request~~ may
11 refuse to provide a short-pay demand statement for that transaction,
12 but shall provide a written statement to the person ~~demanding~~
13 *requesting* it, indicating that the beneficiary elects not to proceed
14 with the proposed transaction, within 21 days of the receipt of the
15 ~~demand short-pay request~~. If the terms and conditions of the
16 short-pay agreement require approval by the beneficiary of a
17 closing statement or similar document prepared by an
18 escrowholder, approval or disapproval shall be provided not more
19 than four days after receipt by the beneficiary of the closing
20 statement, or the closing statement shall be deemed approved,
21 provided that the statement is not clearly contrary to the terms of
22 the short-pay agreement or ~~to any~~ *the* short-pay demand statement
23 ~~previously~~ provided to the escrowholder.

24 (d) (1) A beneficiary statement, payoff demand statement, or
25 short-pay demand statement may be relied upon by the entitled
26 person or his or her authorized agent in accordance with its terms,
27 including with respect to the payoff demand statement or short-pay
28 demand statement reliance for the purpose of establishing the
29 amount necessary to pay the obligation in full. If the beneficiary
30 notifies the entitled person or his or her authorized agent of any
31 amendment to the statement, then the amended statement may be
32 relied upon by the entitled person or his or her authorized agent
33 as provided in this subdivision.

34 (2) If notification of any amendment to the statement is not
35 given in writing, then a written amendment to the statement shall
36 be delivered to the entitled person or his or her authorized agent
37 no later than the next business day after notification.

38 (3) Upon the dates specified in subparagraphs (A) and (B), any
39 sums that were due and for any reason not included in the statement
40 or amended statement shall continue to be recoverable by the

1 beneficiary as an unsecured obligation of the obligor pursuant to
2 the terms of the note and existing provisions of law.

3 (A) If the transaction is voluntary, the entitled party or his or
4 her authorized agent may rely upon the statement or amended
5 statement upon the earlier of (i) the close of escrow, (ii) transfer
6 of title, or (iii) recordation of a lien.

7 (B) If the loan is subject to a recorded notice of default or a filed
8 complaint commencing a judicial foreclosure, the entitled party
9 or his or her authorized agent may rely upon the statement or
10 amended statement upon the acceptance of the last and highest bid
11 at a trustee's sale or a court supervised sale.

12 (e) The following provisions apply to a demand for either a
13 beneficiary statement or a payoff demand statement, *or a short-pay*
14 *demand statement*:

15 (1) If an entitled person or his or her authorized agent requests
16 a statement pursuant to this section and does not specify a
17 beneficiary statement, a payoff demand statement, or short-pay
18 demand statement the beneficiary shall treat the request as a request
19 for a payoff demand statement.

20 (2) If the entitled person or the entitled person's authorized
21 agent includes in the written demand a specific request for a copy
22 of the deed of trust or mortgage, it shall be furnished with the
23 written statement at no additional charge.

24 (3) The beneficiary may, before delivering a statement, require
25 reasonable proof that the person making the demand is, in fact, an
26 entitled person or an authorized agent of an entitled person, in
27 which event the beneficiary shall not be subject to the penalties of
28 this section until 21 days after receipt of the proof herein provided
29 for. A statement in writing signed by the entitled person appointing
30 an authorized agent when delivered personally to the beneficiary
31 or delivered by registered return receipt mail shall constitute
32 reasonable proof as to the identity of an agent. Similar delivery of
33 a policy of title insurance, preliminary report issued by a title
34 company, original or photographic copy of a grant deed or certified
35 copy of letters testamentary, guardianship, or conservatorship shall
36 constitute reasonable proof as to the identity of a successor in
37 interest, provided the person demanding a statement is named as
38 successor in interest in the document.

39 (4) If a beneficiary for a period of 21 days after receipt of the
40 written demand willfully fails to prepare and deliver the statement,

he or she is liable to the entitled person for all damages which he or she may sustain by reason of the refusal and, whether or not actual damages are sustained, he or she shall forfeit to the entitled person the sum of three hundred dollars (\$300). Each failure to prepare and deliver the statement, occurring at a time when, pursuant to this section, the beneficiary is required to prepare and deliver the statement, creates a separate cause of action, but a judgment awarding an entitled person a forfeiture, or damages and forfeiture, for any failure to prepare and deliver a statement bars recovery of damages and forfeiture for any other failure to prepare and deliver a statement, with respect to the same obligation, in compliance with a demand therefor made within six months before or after the demand as to which the award was made. For the purposes of this subdivision, “willfully” means an intentional failure to comply with the requirements of this section without just cause or excuse.

(5) If the beneficiary has more than one branch, office, or other place of business, then the demand shall be made to the branch or office address set forth in the payment billing notice or payment book, and the statement, unless it specifies otherwise, shall be deemed to apply only to the unpaid balance of the single obligation named in the request and secured by the mortgage or deed of trust which is payable at the branch or office whose address appears on the aforesaid billing notice or payment book.

(6) The beneficiary may make a charge not to exceed thirty dollars (\$30) for furnishing each required statement. The provisions of this paragraph shall not apply to mortgages or deeds of trust insured by the Federal Housing Administrator or guaranteed by the Administrator of Veterans Affairs.

(f) The preparation and delivery of a beneficiary statement, a payoff demand statement, or short-pay demand statement pursuant to this section shall not change a date of sale established pursuant to Section 2924g.

(g) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 6. Section 2943 is added to the Civil Code, to read:

2943. (a) As used in this section:

(1) “Beneficiary” means a mortgagee or beneficiary of a mortgage or deed of trust, or his or her assignees.

1 (2) “Beneficiary statement” means a written statement showing:

2 (A) The amount of the unpaid balance of the obligation secured
3 by the mortgage or deed of trust and the interest rate, together
4 with the total amounts, if any, of all overdue installments of either
5 principal or interest, or both.

6 (B) The amounts of periodic payments, if any.

7 (C) The date on which the obligation is due in whole or in part.

8 (D) The date to which real estate taxes and special assessments
9 have been paid to the extent the information is known to the
10 beneficiary.

11 (E) The amount of hazard insurance in effect and the term and
12 premium of that insurance to the extent the information is known
13 to the beneficiary.

14 (F) The amount in an account, if any, maintained for the
15 accumulation of funds with which to pay taxes and insurance
16 premiums.

17 (G) The nature and, if known, the amount of any additional
18 charges, costs, or expenses paid or incurred by the beneficiary
19 which have become a lien on the real property involved.

20 (H) Whether the obligation secured by the mortgage or deed of
21 trust can or may be transferred to a new borrower.

22 (3) “Delivery” means depositing or causing to be deposited in
23 the United States mail an envelope with postage prepaid,
24 containing a copy of the document to be delivered, addressed to
25 the person whose name and address is set forth in the demand
26 therefor. The document may also be transmitted by facsimile
27 machine to the person whose name and address is set forth in the
28 demand therefor.

29 (4) “Entitled person” means the trustor or mortgagor of, or his
30 or her successor in interest in, the mortgaged or trust property or
31 any part thereof, any beneficiary under a deed of trust, any person
32 having a subordinate lien or encumbrance of record thereon, the
33 escrowholder licensed as an agent pursuant to Division 6
34 (commencing with Section 17000) of the Financial Code, or the
35 party exempt by virtue of Section 17006 of the Financial Code
36 who is acting as the escrowholder.

37 (5) “Payoff demand statement” means a written statement,
38 prepared in response to a written demand made by an entitled
39 person or authorized agent, setting forth the amounts required as
40 of the date of preparation by the beneficiary, to fully satisfy all

1 obligations secured by the loan that is the subject of the payoff
2 demand statement. The written statement shall include information
3 reasonably necessary to calculate the payoff amount on a per diem
4 basis for the period of time, not to exceed 30 days, during which
5 the per diem amount is not changed by the terms of the note.

6 (b) (1) A beneficiary, or his or her authorized agent, shall,
7 within 21 days of the receipt of a written demand by an entitled
8 person or his or her authorized agent, prepare and deliver to the
9 person demanding it a true, correct, and complete copy of the note
10 or other evidence of indebtedness with any modification thereto,
11 and a beneficiary statement.

12 (2) A request pursuant to this subdivision may be made by an
13 entitled person or his or her authorized agent at any time before,
14 or within two months after, the recording of a notice of default
15 under a mortgage or deed of trust, or may otherwise be made more
16 than 30 days prior to the entry of the decree of foreclosure.

17 (c) A beneficiary, or his or her authorized agent, shall, on the
18 written demand of an entitled person, or his or her authorized
19 agent, prepare and deliver a payoff demand statement to the person
20 demanding it within 21 days of the receipt of the demand. However,
21 if the loan is subject to a recorded notice of default or a filed
22 complaint commencing a judicial foreclosure, the beneficiary shall
23 have no obligation to prepare and deliver this statement as
24 prescribed unless the written demand is received prior to the first
25 publication of a notice of sale or the notice of the first date of sale
26 established by a court.

27 (d) (1) A beneficiary statement or payoff demand statement
28 may be relied upon by the entitled person or his or her authorized
29 agent in accordance with its terms, including with respect to the
30 payoff demand statement reliance for the purpose of establishing
31 the amount necessary to pay the obligation in full. If the beneficiary
32 notifies the entitled person or his or her authorized agent of any
33 amendment to the statement, then the amended statement may be
34 relied upon by the entitled person or his or her authorized agent
35 as provided in this subdivision.

36 (2) If notification of any amendment to the statement is not given
37 in writing, then a written amendment to the statement shall be
38 delivered to the entitled person or his or her authorized agent no
39 later than the next business day after notification.

1 (3) Upon the dates specified in subparagraphs (A) and (B) any
2 sums that were due and for any reason not included in the
3 statement or amended statement shall continue to be recoverable
4 by the beneficiary as an unsecured obligation of the obligor
5 pursuant to the terms of the note and existing provisions of law.

6 (A) If the transaction is voluntary, the entitled party or his or
7 her authorized agent may rely upon the statement or amended
8 statement upon the earlier of (i) the close of escrow, (ii) transfer
9 of title, or (iii) recordation of a lien.

10 (B) If the loan is subject to a recorded notice of default or a
11 filed complaint commencing a judicial foreclosure, the entitled
12 party or his or her authorized agent may rely upon the statement
13 or amended statement upon the acceptance of the last and highest
14 bid at a trustee's sale or a court supervised sale.

15 (e) The following provisions apply to a demand for either a
16 beneficiary statement or a payoff demand statement:

17 (1) If an entitled person or his or her authorized agent requests
18 a statement pursuant to this section and does not specify a
19 beneficiary statement or a payoff demand statement the beneficiary
20 shall treat the request as a request for a payoff demand statement.

21 (2) If the entitled person or the entitled person's authorized
22 agent includes in the written demand a specific request for a copy
23 of the deed of trust or mortgage, it shall be furnished with the
24 written statement at no additional charge.

25 (3) The beneficiary may, before delivering a statement, require
26 reasonable proof that the person making the demand is, in fact,
27 an entitled person or an authorized agent of an entitled person,
28 in which event the beneficiary shall not be subject to the penalties
29 of this section until 21 days after receipt of the proof herein
30 provided for. A statement in writing signed by the entitled person
31 appointing an authorized agent when delivered personally to the
32 beneficiary or delivered by registered return receipt mail shall
33 constitute reasonable proof as to the identity of an agent. Similar
34 delivery of a policy of title insurance, preliminary report issued
35 by a title company, original or photographic copy of a grant deed
36 or certified copy of letters testamentary, guardianship, or
37 conservatorship shall constitute reasonable proof as to the identity
38 of a successor in interest, provided the person demanding a
39 statement is named as successor in interest in the document.

1 (4) *If a beneficiary for a period of 21 days after receipt of the*
2 *written demand willfully fails to prepare and deliver the statement,*
3 *he or she is liable to the entitled person for all damages which he*
4 *or she may sustain by reason of the refusal and, whether or not*
5 *actual damages are sustained, he or she shall forfeit to the entitled*
6 *person the sum of three hundred dollars (\$300). Each failure to*
7 *prepare and deliver the statement, occurring at a time when,*
8 *pursuant to this section, the beneficiary is required to prepare and*
9 *deliver the statement, creates a separate cause of action, but a*
10 *judgment awarding an entitled person a forfeiture, or damages*
11 *and forfeiture, for any failure to prepare and deliver a statement*
12 *bars recovery of damages and forfeiture for any other failure to*
13 *prepare and deliver a statement, with respect to the same*
14 *obligation, in compliance with a demand therefor made within six*
15 *months before or after the demand as to which the award was*
16 *made. For the purposes of this subdivision, “willfully” means an*
17 *intentional failure to comply with the requirements of this section*
18 *without just cause or excuse.*

19 (5) *If the beneficiary has more than one branch, office, or other*
20 *place of business, then the demand shall be made to the branch*
21 *or office address set forth in the payment billing notice or payment*
22 *book, and the statement, unless it specifies otherwise, shall be*
23 *deemed to apply only to the unpaid balance of the single obligation*
24 *named in the request and secured by the mortgage or deed of trust*
25 *which is payable at the branch or office whose address appears*
26 *on the aforesaid billing notice or payment book.*

27 (6) *The beneficiary may make a charge not to exceed thirty*
28 *dollars (\$30) for furnishing each required statement. The*
29 *provisions of this paragraph shall not apply to mortgages or deeds*
30 *of trust insured by the Federal Housing Administrator or*
31 *guaranteed by the Administrator of Veterans Affairs.*

32 (f) *The preparation and delivery of a beneficiary statement or*
33 *a payoff demand statement pursuant to this section shall not change*
34 *a date of sale established pursuant to Section 2924g.*

35 (g) *This section shall become operative on January 1, 2014.*

36 ~~SEC. 5.~~

37 SEC. 7. Section 17312 of the Financial Code is amended to
38 read:

39 17312. (a) Each person licensed pursuant to this division who
40 is engaged in the business of receiving escrows specified in

subdivision (c) and whose escrow business location is located within the State of California shall participate as a member in Fidelity Corporation in accordance with this chapter and rules established by the Board of Directors of Fidelity Corporation. Fidelity Corporation shall not deny membership to any escrow agent holding a valid unrevoked license under the Escrow Law who is required to be a member under this subdivision.

(b) Upon filing a new application for licensure as required by Section 17201, persons required to be a member of Fidelity Corporation shall file a copy thereof concurrently with Fidelity Corporation. If an application for licensure submitted to Fidelity Corporation contains personal or confidential information, Fidelity Corporation and its board shall maintain this information in confidence to protect the privacy of the information. The copy of the application shall include the three-thousand-dollar (\$3,000) fee specified in subdivision (a) of Section 17320 and all required Fidelity Corporation Certificates set forth in Sections 17331 and 17331.1. Fidelity Corporation shall promptly furnish to the commissioner a compliance letter confirming that the applicant has satisfied the requirements to be a member of Fidelity Corporation.

(c) The required membership in Fidelity Corporation shall be limited to those licensees whose escrow business location is located within the State of California and who engage, in whole or in part, in the business of receiving escrows for deposit or delivery in the following types of transactions:

(1) Real property escrows, including, but not limited to, the sale, encumbrance, lease, ~~exchange, or~~ transfer of title, ~~and~~ loans or other obligations to be secured by a lien upon real property, *and exchanges*, excluding money or property held or deposited ~~with a person acting as an exchange facilitator pursuant to Division 20.5 (commencing with Section 51000); pursuant to paragraph (3) of subdivision (a) of Section 51003.~~

(2) Bulk sale escrows, including, but not limited to, the sale or transfer of title to a business entity and the transfer of liquor licenses or other types of business licenses or permits.

(3) Fund or joint control escrows, including, but not limited to, transactions specified in Section 17005.1, and contracts specified in Section 10263 of the Public Contract Code.

1 (4) The sale, transfer of title, or refinance escrows for
2 manufactured homes or mobilehomes.

3 (5) Reservation deposits required under Article 2 (commencing
4 with Section 11010) of Chapter 1 of Part 2 of Division 4 of the
5 Business and Professions Code or by regulation of the Department
6 of Real Estate to be held in an escrow account.

7 (6) Escrows for sale, transfer, modification, assignment, or
8 hypothecation of promissory notes secured by deeds of trust.

9 (d) Coverage required to be provided by Fidelity Corporation
10 under this chapter shall be provided to members only for loss of
11 trust obligations with respect to those types of transactions
12 specified in subdivision (c). If a loss covered by Fidelity
13 Corporation is also covered by a member's general liability,
14 dishonesty, or indemnity policy, or other private insurance policy,
15 then the member's private policy shall first be applied as the
16 primary indemnity to cover the loss. However, the failure of the
17 member's private primary policy to indemnify the member's loss
18 within the time specified for Fidelity Corporation indemnity in
19 subdivision (a) of Section 17314 shall not limit the indemnity
20 obligations of Fidelity Corporation as defined in this chapter.
21 Indemnity coverage for those types of transactions not specified
22 in subdivision (c) shall be provided by escrow agents in accordance
23 with Section 17203.1.